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ABSTRACT

Pennsylvania's Act 195, the Public Employee Relations Act, went into effect in October 1970. The Act, a piece of model legislation in the area of collective negotiations, provides for the right of employees to organize and to be represented by an exclusive bargaining agent; provides for mediation, fact-finding, and arbitration services; and takes a position on the use of strikes by employees. A key provision of the Act is the defining of "public employer" to include the Commonwealth and its political subdivisions as well as any nonprofit organization or institution, and any institution that receives government appropriation or grants. Under this definition, both the public and private colleges and universities in Pennsylvania are covered. Thus far, there has been little activity on the private campuses where a drive for representation is concerned. There has been a growing interest, however, in the state's institutions of higher education. The state colleges have a representative agent and actual bargaining has begun. Seven of the 14 community colleges have elected agents, and 3 of these already have agreements. Other public institutions in the state are involved in various stages of the entire process. (Author/HS)

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ACT 195 AND COLLECTIVE NEGOTIATIONS IN THE COMMONWEALTH OF PENNSYLVANIA

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ACT 195 AND COLLECTIVE NEGOTIATIONS IN THE

COMMONWEALTH OF PENNSYLVANIA

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INTRODUCTION

Collective negotiations is a newcomer to the higher education scene with its formal introduction at the City University of New York in 1969. Its recency is reflected in activity in legislative chambers across the country as bills concerning collective negotiations are introduced and passed. Pennsylvania's legislature became caught up in the spirit and then moved ahead of the others.

Pennsylvania's act is unique in that it provides for a right to strike by the employees. Only one other state in the union, Hawaii, has similar legislation which was passed in May, 1970. Pennsylvania followed in July, but the act didn't take effect until October, 1970.

DESCRIPTION OF ACT 195

Act 195, the Public Employee Relations Act, might well be labeled model legislation in the area of collective negotiations. It provides for the right of employees to organize and to be represented by an exclusive bargaining agent. It also provides for mediation, fact-finding, and arbitration services. And, most importantly, it takes a position on the use of strikes by employees.

As explained in the Act, purpose of the Act is to promote orderly and constructive relationships between all public employees and their employees. Recognizing that unresolved disputes between the public employer and its employees are injurious to the public,

those who drafted the legislation wanted to provide adequate means for minimizing the disputes and providing for their resolution.

A key provision of the Act is the defining of public employer to include the Commonwealth and its political subdivisions as well as any nonprofit organization or institution, and any institution which receives government appropriation or grants.

The Act also sets forth certain stipulations concerning representation. The election of a representing agent is initiated when 30% or more of the public employes in the unit indicate a desire to be exclusively represented for bargaining purposes. The employes must have an identifiable community of interest, and the unit cannot include both professional and non-professional employes unless a majority of the professionals vote for inclusion in such a unit. Nor can the unit include employes at the first level of supervision; they must form their own unit. The Act also makes clear that where the Commonwealth is the employer, bargaining will be on a statewide basis.

The scope of bargaining is to cover "wages, hours and other terms and conditions of employment," but is not to include "matters of inherent managerial policy."

If, during the bargaining process, an impasse is reached, the parties may submit to mediation. If agreement is still not reached after 20 days, the Pennsylvania Labor Relations Board may appoint a fact-finding panel which will then make recommendations.

If after all these steps have been followed, agreement is not reached, a strike by the employes "shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety and welfare of the public."

Some of the stipulations concerning strikes include: (1) strikes during the bargaining, mediation and fact-finding processes are prohibited, (2) unfair practices by the employer is not a defense for a prohibited strike, (3) employees are not entitled to pay or compensation during the strike, (4) refusal of non-striking employees to cross the picket lines of a legal strike is deemed a prohibited strike, and (5) strikes by guards at prisons or mental hospitals, or employees directly involved with and necessary to the functioning of the courts are prohibited at any time.

CURRENT SITUATION IN PENNSYLVANIA

What effects have Act 195 had on the higher education community in Pennsylvania?

At the three state-related universities of Pennsylvania State University, Temple University and the University of Pittsburgh there has been an increase in activity and evidence of interest in establishing a representing agent. At the branch campuses of Penn State there has been even more interest because of the special concerns of the faculty at these locations.

Among the private institutions, which are included in the definition of public employer, there has been some activity on individual campuses, but there is no concerted drive for representation. Taken as a group these institutions represent a body of approximately 10,000 faculty members, 1500 in the private junior colleges alone.

The situation with the state-owned institutions is quite different. In an election on October 6, of this year, the 4000 faculty at these institutions elected the Association of Pennsylvania State College and University Faculty as their bargaining agent. This association is affiliated with the National Education Association through the Pennsylvania Association for Higher Education.

Bargaining for these institutions is done at the statewide level, and the first session was held on November 2. There is also a provision for meaningful negotiating at the local level on local issues. What this is to involve is not yet clear.

With the community colleges negotiations is at the local level. Seven of the colleges have already elected representing agents; four selected the state affiliate of NEA and three the American Federation of Teachers. Of those colleges electing AFT, two were in the urban areas of Philadelphia and Pittsburgh.

Among the seven institutions without elected agents there are varing degrees of developments but the activity at all campuses has increased since the recent election in the state-owned institutions.

A new development may result in changes in the collective negotiation process at community colleges. An act is presently in the final stages of being passed in the state legislature which would give to the governor the right to appoint one-third of the trustees at community colleges. What practical effects this will have on the bargaining process is open to conjecture.

RESULTING ISSUES

These experiences have rapidly brought to the surface a number of issues which have been quietly growing in Pennsylvania as well as other states.

The unique right to strike feature of Act 195 has been responsible for many of the questions and concerns. It clearly settled one of the questions, however. There is no longer much discussion of the legality of strikes against public employers.

Another issue raised is whether the strike weapon as used in the private sector is applicable to the public sector. In the private sector a strike is an economic tool---the withdrawn services result in a drain on the capital investment of management..

In the public sector withdrawn services do not have the same effect in that no capital has been invested for the purpose of making a profit.

A strike in the public sector is primarily a public relations tool. It must be based on issues which are clear and right in the eyes of the public in order to maximize the pressures on the

board. The timing and handling must be planned very carefully. Because of this unique difference-strikes in the public sector are used generally only after much consideration and forethought.

Critics of Act 195 warned that if it were passed the education process in the state could come to a halt because everyone would be out on strike. The events to date have not borne this out.

The only strike so far was one at the Philadelphia Community College in September, 1970. The strike followed the passage of Act 195, but it was still technically illegal in that the effective date of the Act was October.

Two other colleges have faced the strike issue but agreements were reached before it was actually necessary to set up picket lines.

Each election and/or agreement generates even more interest in collective bargaining at those campuses without it. The administrators find it increasingly difficult to buy off their faculties. There seems to be a feeling that the honeymoon for higher education is over. Now everyone must struggle in whatever way necessary to preserve the advances which have been made and to insure other advances as they are possible.

Another question raised is whether agreements reached at the college level can have any real meaning if the state legislature does not provide the necessary money. In Pennsylvania the community colleges are funded on a formula basis and have some assurance of the amounts of money available from the state.

With the state colleges this is an important issue. The negotiations are at the state level where an agreement might be reached by the parties involved -- only to find later that the legislative appropriation process reduces the money available. This will have to be worked out somehow.

The state-related universities pose yet another problem. Their state aid has been decided through a legislative maze with the outcome resting on the lobbying efforts of the individual institution. Under this system collective negotiations can add another important dimension to the process. A formula approach for state aid to these institutions has been in the development stage, and this may be able to take collective negotiations into account.

Another issue surfacing in Pennsylvania is the definition of first level supervisor. Act 195 excludes first level supervisors from the bargaining unit, but does not specify what first level supervisor should encompass. The bargaining unit for the state colleges includes the department chairman. The process of defining the bargain unit in other colleges often hinges on whether the department chairman should or should not be included.

What about "representation" for the boards of trustees? Are they to stand alone while the faculty call into play all the resources of their representative? At the fourth annual conference of Pennsylvania community college trustees in June, 1970, (before the passage of Act 195) Ray Howe, of Michigan, discussed his

experiences in that state. His recommendation was that the trustees should hire the best possible help, set down the guidelines, make clear their reactions to the demands of the faculty, and then allow the professional latitude to negotiate.

Hiring a negotiator raises the issue of cost of collective bargaining -- and not just the cost of the settlement. As the boards get more involved in collective bargaining, they begin to recognize that there are very real costs associated with the process itself. As these costs grow, and grow they will, some means of providing for them will have to be found.

Lastly, there is the overriding question of what the level of negotiations shall be. At the moment in Pennsylvania negotiations for the state colleges is at the state level and negotiations for community colleges is at the local-institutional-level.

In some other states negotiations in community colleges is at the state level. Will this be the pattern of the future for Pennsylvania as well? This will be an especially pertinent question if the governor begins to appoint one-third of the turstees, as requested in a bill before the legislature.

To review briefly then, Pennsylvania has had one year's experience with a unique act which embraces all public employers and permits strikes after certain procedures have been followed.

The right to strike provision gives faculty at Pennsylvania's colleges and universities equality at the bargaining table, and

forces the boards of trustees to bargain in good faith. A strike in the public sector must be considered a public relations tool which uses public pressure to achieve its goals, and contrary to popular belief - it has not been used extensively.

There is a growing interest in collective negotiations among faculty in the state's institutions of higher education. The state colleges have a representative agent and actual bargaining has begun. Seven of the fourteen community colleges have elected agents, and three of these already have agreements. Other public institutions in the state are involved in various stages of the entire process.

There are, however, some unanswered questions. What role will be played by the board and especially by the admiistration in the light of these new developments? Will negotiations remain at the local level for community colleges? How will the costs of negotiations be met? In the rearrangement of priorities which will go where?